

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable Judith C. Herrera

CASE NO. CR 13-3140 JH

DATE: MAY 15, 2014

TITLE: *USA v. Lehabim Ulises Moreno-Rubio*

COURTROOM CLERK: A. Carlson

COURT REPORTER: L. Reinicke

SPANISH INTERPRETER: Leticia Medina & Naomi Todd-Reyes in a.m.; D. Gutierrez & Humberto Orive in p.m.

COURT IN SESSION: 9:03 A.M.
1:21 P.M.

COURT IN RECESS: 11:57 a.m.
4:53 P.M.

TOTAL COURT TIME: 6 HOURS + 26 MINUTES

TYPE OF PROCEEDING: Defendant's Motion to Suppress Evidence Obtained from Greyhound Bus [Doc. 28]

COURT'S RULINGS/DISPOSITION: Court takes motion under advisement.

ATTORNEYS PRESENT FOR PLAINTIFF(S):

David M. Walsh; Paul Mysliwicz

ATTORNEYS PRESENT FOR DEFENDANT(S):

John F. Robbenhaar

PROCEEDINGS:

9:03 a.m. Court in Session. Court calls case.

9:03 a.m. Both interpreters sworn in

9:05 a.m. Court discusses scheduling

9:05 a.m. Gov objects to videotape on relevancy ground

9:07 a.m. Def addresses Ct re video

9:09 a.m. Ct rules it will not exclude video at this point

9:10 a.m. Discussion re order of case & burden: Def addresses Ct

9:10 a.m. Gov addresses Ct re order & burden

9:11 a.m. Def invokes Rule

9:11 a.m. Gov enters appearances & does not object to Walsh leaving courtroom

9:12 a.m. Ct states Rule will apply

9:14 a.m. Direct exam. of Gov's witness Jarrell Perry by Walsh

9:51 a.m. Gov states it may ask to reopen direct later; Ct leaves issue open

9:52 a.m. Cross-exam of Jarrell Perry by Robbenhaar

9:55 a.m. Gov objects to relevance re luggage not belonging to Def; Def responds

9:55 a.m. Ct will allow testimony and consider what weight it merits later; will give Def some leeway

9:56 a.m. Def proffers Exhibit B (aerial photo of Greyhound station and wash bay); no objection

9:57 a.m. Ct admits Exhibit B

10:15 a.m. Ct in recess

10:33 a.m. Ct back in session

10:35 a.m. Def proffers Exhibit C (photo of Def's small backpack); no objection.

10:35 a.m. Court admits Exhibit C

10:36 a.m. Def proffers Exhibit D (photo of inside of Def's small backpack) and Exhibit E (photo of Def's small backpack and contents); no objection

10:36 a.m. Ct admits Exhibits D, E

10:36 a.m. Def proffers Exhibit F (photo of Def's black Nike bag); no objection

10:37 a.m. Ct admits Exhibit F

10:37 a.m. Def proffers short excerpts from longer video on DVD, Exhibit A; Gov objects to relevancy

10:38 a.m. Ct will allow excerpts of video

10:38 a.m. Def clarifies longer video is marked Exhibit A—excerpts converted into Windows media format, with 4 separate videos extracted

10:39 a.m. Def proffers Exhibit A moved into admission

10:40 a.m. Gov objects to admission on relevancy, but not to format change

10:40 a.m. Ct admits Exhibit A

10:58 a.m. Def plays video excerpts, in chronological order

11:29 a.m. Gov objects to going into *de la Campa Rangel* opinion. Ct states it has read the opinion.

11:30 a.m. Gov objects again to further questioning re Perry's testimony in another case. Ct allows question.

11:31 a.m. Def seeks to use transcript of prelim hearing in prior case to impeach witness; Gov objects. Discussion. Def agrees not to use the transcript.

11:38 a.m. Gov objects to questioning re *Grobstein* case. Ct allows questioning.

11:42 a.m. Redirect of Jarrell Perry by Walsh

11:43 a.m. Gov proffers Exhibit 3 (photo of nametag inside velcro handles on Def's black Nike bag); Exhibit 4 (photo of plastic-wrapped bundle removed from black Nike bag); Exhibit 5 (photo of small inner black zipper bag containing plastic-wrapped bundle). No objection.

11:44 a.m. Ct admits Exhibits 3, 4, 5.

11:51 a.m. Ct allows recross exam. of Jarrell Perry

11:51 a.m. Def addresses Ct, requesting documents re professional responsibility be produced to Ct for in camera review, to be disclosed if Ct finds Giglio or Brady issue.

11:52 a.m. Gov objects.

11:52 a.m. Def responds.

11:53 a.m. Ct asks counsel to file, within 10 days, a motion requesting in camera review, will

allow Gov to respond.

11:56 a.m. End of recross. Gov has no re-redirect.

11:57 a.m. Court in recess for lunch.

1:21 p.m. Court back in session

1:22 p.m. Direct exam. of Jonathan Walsh

1:34 p.m. Gov proffers Exhibit 1 (search warrant for black duffle bag, owner Jesse Zeitz).

No objection.

1:35 p.m. Ct admits Exhibit 1.

1:41 p.m. Gov proffers Exhibit 2 (CD recording of Walsh's interdiction).

1:42 p.m. Def does not see relevance but does not object.

1:42 p.m. Ct admits Exhibit 2. One minute is played

1:47 p.m. Cross-exam. of Jonathan Walsh

1:57 p.m. No redirect

1:57 p.m. Gov has no further evidence

1:58 p.m. Def calles James Dean

1:58 p.m. Def asks Walsh be excluded under Rule; Gov does not object. Ct allows Walsh to be excluded

2:00 p.m. Direct exam. of James Dean by Robbenhaar

2:06 p.m. Gov objects: hearsay. Ct overrules objec.

2:06 p.m. Cross exam of James Dean by Mysliwicz

2:08 p.m. Def objects: beyond scope and speculative. Ct allows question.

2:18 p.m. Redirect of James Dean

2:19 p.m. Ct permanently excuses witness

2:19 p.m. Direct examination of Jonathan Riley

2:36 p.m. Cross-exam. by Mysliwicz

2:45 p.m. Def objects to questioning re report Perry tried to kill witness. Bench conference. Ct allows question.

2:55 p.m. Gov. asks Ct to take judicial notice of 4 documents: Exhibit 6 (plea agreement, Doc. 24 in 12-cr-3107); Exhibit 7 (plea agreement, Doc. 30 in 13-cr-60); Exhibit 8 (memo in support of role adjustment and variance, Doc. 33 in 13-cr-60); Exhibit 9 (J & S, Doc. 41 in 13-cr-60).

3:02 p.m. Ct takes judicial notice of Exhibits 6, 7, 8, & 9

3:02 p.m. Redirect of Jonathan Riley

3:04 p.m. Def addresses Ct re Grobstein. Gov addresses Ct.

3:05 p.m. Gov recross-exam of Jonathan Riley

3:07 p.m. Re-redirect by Def

3:08 p.m. Ct permanently excuses witness

3:08 p.m. Ct in recess

3:24 p.m. Ct back in session

3:25 p.m. Direct testimony of Defendant Moreno-Rubio

3:27 p.m. Defendant proffers Exhibit G (computer printout re Def's bus ticket).

3:28 p.m. Gov objects: not his ticket, but info produced by Greyhound; not relevant, not clear ticket says same thing

3:30 p.m. Ct admits Exhibit G.

3:58 p.m. Cross-exam of Moreno-Rubio

3:59 p.m. Def objects—beyond the scope to ask re what's in bag

4:00 p.m. Ct overrules objection.

4:03 p.m. Def objects to questioning re purpose of going to Fort Wayne, as beyond scope.

4:03 p.m. Ct grants objection.

4:05 p.m. Def objects to questioning re residence of Def's family, as beyond scope.

4:05 p.m. Ct grants objection.

4:26 p.m. Def objects to questioning re Def's saying at DEA office that he understood what was said on bus.

4:26 p.m. Ct. overrules objection

4:35 p.m. Redirect of Moreno-Rubio

4:36 p.m. end of testimony

4:37 p.m. Gov addresses Ct re Perry's personnel file. Gov proposes submit letters to Ct in camera.

4:38 p.m. Def addresses Ct.

4:39 p.m. Gov addresses Ct

4:40 p.m. Ct accepts letters from Gov.

4:43 p.m. Ct in recess.